APPENDIX A

Judgment of the Court of Appeals

United States Court of Appeals

FOR THE NINTH CIRCUIT

PAN AMERICAN WORLD AIRWAYS, INC.,
Appellant,

vs.

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, etc., et al.,
Appellees.

No. 18,822

APPEAL from the United States District Court for the District of Nevada.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Nevada and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered November 5, 1963.

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Opinion of the Court of Appeals

United States Court of Appeals

FOR THE NINTH CIRCUIT

PAN AMERICAN WORLD AIRWAYS, INC.,
Appellant,

vs.

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, etc., et al.,
Appellees.

No. 18,822
Nov. 5, 1963

Appeal from an order of the United States District Court for the District of Nevada

Before: MADDEN, Judge of the Court of Claims, and HAMLIN and BROWNING, Circuit Judges.

MADDEN, Judge of the Court of Claims:

This is an appeal from an order of the United States District Court for the District of Nevada, denying the plaintiff Pan American's motion under Rule 65 of the Federal Rules of Civil Procedure for a preliminary injunction against the defendant Brotherhood's labor organization and certain individually named respondents restraining them from striking, picketing, and otherwise interfering with Pan American's operations at the Nuclear Research Development Station (NRDS) at Jackass Flats, Nevada.

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If the labor law applicable to Pan American's enterprise at this location was the ordinary federal law applicable to most industrial enterprises of substantial size, the District Court was right in denying the injunction because the Norris-La Guardia Act, 29 U. S. C. § 101 *et seq.*, forbids the issuance of an injunction in cases of labor disputes in such enterprises, in the circumstances of this case. Pan American's contention is that the generally applicable labor law did not apply to its situation; that the special provisions of the federal Railway Labor Act, 45 U. S. C. § 151 *et seq.*, were the applicable law in its case, and that under that law it was entitled to its injunction. If Pan American is correct as to which law is applicable, the injunction should have been granted.

The District Court, though denying the motion for a preliminary injunction, granted a ten-day stay to preserve the status quo pending Pan American's appeal to this court. Rule 62(c) Fed. R. C. P. The appeal was taken in time under 28 U. S. C. 1292(a)(1); and Pan American made a motion in this court for an interlocutory injunction pending appeal, under 28 U. S. C. § 1651(a) and Rule 62(g) Fed. R. C. P. The motion was granted, and the appeal has now been heard.

The Railway Labor Act, which Pan American says is the applicable law in this case, when it was enacted in 1926, applied only to railroads. This original part of the Act is in 45 U. S. C. §§ 151-163. In 1936 the Act was amended to include carriers by air. The added sections are §§ 181-188 of 45 U. S. C. Sections 181 and 182 provide:

> § 181. All of the provisions of sections 151, 152, and 154-163 of this title are extended to and shall cover every common carrier by air engaged in interstate or

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foreign commerce, and every carrier by air transporting mail or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers . . . .

§ 182. The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of sections 151, 152 and 154-163 of this title shall apply to said carriers by air and their employees in the same manners and to the same extent as though such carriers and their employees were specifically included within the definition of "carrier" and "employee", respectively, in section 151 of this title.

The reference to section 151 and the other sections of the original act requires that the coverage of the original act be kept in mind in determining the coverage of the new air carrier sections.

Section 151 of 45 U. S. C. in its first paragraph, which is section 1, First, of the Act, says:

First. The term "carrier" includes any express company, sleeping car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad . . . .

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So the Railway Labor Act applies to every carrier by railroad which is subject to the Interstate Commerce Act. And Section 1, Fifth of the RLA, 45 U. S. C. 151, Fifth, says:

> Fifth. The term "employee" as used herein includes every person in the service of a carrier . . . who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect . . . .

The Interstate Commerce Act, involved here by the foregoing reference to the orders of the Interstate Commerce Commission says, in section 1; 49 U. S. C.:

> The provisions of this chapter shall apply to common carriers engaged in (a) the transportation of persons or property wholly by railroad.

Because Congress thought it was necessary that railroad transportation of persons and property should not be interrupted by labor disputes, if those disputes could be settled by negotiation and mediation, and certain other procedures, Congress in the Railway Labor Act, 45 U. S. C. §§ 151(a)-160 provided for the creation of various boards, for mediation, arbitration, and finally for Emergency Boards to be appointed by the President, when important transportation service is seriously threatened by labor trouble. At the time of the 1926 legislation, there were no federal labor relations statutes applying generally to industry or other important activities in the United States. Railroad labor was by the Railway Labor Act given certain advantages over other labor, but it was subjected to certain restraints, and strikes were forbidden unless and until the

mediation and other procedures provided for in the RLA had been followed. If strikes or other labor activities imperiling this continuity of transportation occurred in violation of the RLA, they could be enjoined, the Norris-La Guardia Act excepting such unlawful activities from its prohibition of injunctions.

The air transportation industry was, then, in effect subjected to the labor provisions of the RLA by the 1936 amendments.

In our instant case, Pan American's operation at the Nuclear Research Development Station where the labor troubles with which we are concerned occurred, had nothing to do with transportation by air or by rail. The United States Atomic Energy Commission had in June, 1963, awarded to Pan American a contract for "housekeeping" and general support services at the Commission's station located at its Nevada Test Site at Jackass Flats. Pan American's work was the preventive maintenance of electrical, electronic and ventilation equipment and such technical functions as the storage and use of liquids, fuels and gases. The work is in connection with the development of a nuclear rocket engine to be used for the propulsion of space vehicles.

It would seem, then, that the same problem of interpretation and application of the pertinent statutes would be presented, if Pan American's management had acquired and were operating a shoe factory for profit. Would the employees in that factory be obliged to comply with the waiting periods and mediation provisions of the Railway Labor Act before they would be free to do what the employees in a clothing factory across the street from them

were guaranteed the right to do, viz. to strike if they were not bound by contract not to strike?

The purpose of the restrictive provisions of the Railway Labor Act is to keep transportation moving. If the Act has the effect of keeping employees in a shoe factory working against their will, it would seem that the effect of the Act is not coincident with its purpose. Pan American urges us to keep our attention on the text of the legislation; that the legislation says, in section 1, Fifth, 45 U. S. C. § 151, Fifth:

> The term employee, as used herein includes every person in the service of a carrier.

Pan American says, obviously correctly, that it is a carrier, hence the person who works in its shoe factory, or in its NRDS enterprise is an employee within the meaning of the RLA. Even literally and textually the matter is not quite that simple, because the section says more than we have quoted above: It says:

> The term employee, as used herein includes every person in the service of a carrier * * * who performs any work defined as that of an employee * * * in the orders of the Interstate Commerce Commission now in effect.

We suppose that the Interstate Commerce Commission did not have in effect any orders relating to employees in a shoe factory, even though the shoe factory happened to be owned by a railroad.

The defendants point to § 151, hereinbefore quoted, which defines the word "carrier" as used in the RLA as including not only railroads themselves, but

> any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration, or icing, storage and handling of property transported by railroad * * *.

The statute thus made certain that railroads could not escape the application of the statute to activities closely related to railroad transportation, by having those activities carried on by subsidiary or controlled enterprises. Here the attention of the statute was upon transportation and activities accessory to transportation. Would Congress at the same time and in the same statute, in § 151, Fifth, have intended to make the coverage of the word "employee" in the Act depend, not at all upon the employee's relation to transportation, but upon the logically irrelevant fact that his employer owned a railroad, in addition to the shoe factory in which the "employee" worked?

There are two quite different bodies of federal labor law, the law of the Railway Labor Act for railroad and airline employees, and the law of the National Labor Relations Act and the Fair Labor Standards Act for most other employees.

The Supreme Court of the United States said in California v. Taylor, 353 U. S. 553 at pages 565 and 566:

> The Railroad Labor Act is essentially an instrument of industrywide government. See Elgin, J. & E. R. C. v. Burley, 325 U. S. 711, 749, 751, 89 L. Ed. 1886, 1908.

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1909, 65 S. Ct. 1282 (dissenting opinion). The railroad world for which the Act was designed has been described as 'a state within a state.' Its population of some three million, if we include the families of workers, has its own customs and its own vocabulary, and lives according to rules of its own making.

* * * *

Congress has not only carved this singular industry out of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 USC § 182, but it has provided, by the Railway Labor Act, techniques peculiar to that industry. An extended period of congressional experimentation in the field of railway labor legislation resulted in the Railway Labor Act and produced its machinery for conciliation, mediation, arbitration, and adjustments of disputes.

An intent on the part of Congress to lift the employees of our hypothetical shoe factory, or of our actual Nuclear Research Development Station, out of the legal area occupied by most other workmen in the country who do exactly the same work under exactly the same conditions and surroundings, and place them, for employment relations purposes, in the "state within a state" occupied by railroad and air transportation workers, would be so incongruous as to suggest that there must be some reason, though not readily apparent, why Congress entertained such an intent.

Research of counsel has produced no such reason, and has left us facing the problem of whether a highly specialized and distinct set of labor laws tailor-made for employees engaged in transportation of persons and goods should be

applied to other employees having nothing whatever to do with the transportation of persons and goods. We do not have here a problem of determining whether the relationship of these employees to transportation is "tenuous," "remote" or "negligible."* In our case the relationship is non-existent. If, then, these employees are governed by the Railway Labor Act, it is because Congress has said that they should be so governed. That is what Pan American urges. But our analysis of the pertinent statutes earlier in this opinion convinces us that Congress has not said that so unequivocally as to leave no room for an interpretation of the statutes which will produce a reasonable, and not a merely arbitrary result.

We suggest, in passing, that the defendant unions see somewhat more relevance to our problem than we do in the Supreme Court's decision in the Virginian Railway case. That case was decided on March 29, 1937. The question was whether the federal statute, the Railway Labor Act, was applicable to the "back-shop" employees of the railroad who kept the railroad's engines and equipment in repair so that they could be returned to use in transportation. The Court was, as Pan American says, dealing with a question, not of statutory interpretation, not of deciding whether one federal statute rather than another was applicable to these back-shop employees, but whether the federal Commerce Power was broad enough to permit Congress to regulate these back-shop labor relations at all. To be sure, the Supreme Court two weeks later, on April 12, 1937, issued its decision in the case of *National Labor Relations*

*See Virginian R. Co. v. System Federation, 300 U. S. 515, 57 S. Ct. 592, L. Ed.

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Board v. *Jones and Laughlin Steel Co.*, 301 U. S. 1, giving such a broad scope to the Commerce Power as to remove any doubt with regard to federal power in such a situation as that in *Virginian*. But at the time of the decision in *Virginian* it was necessary to show the substantial tangible relation between the back-shop work and the movement of trains in commerce, in order to satisfy the then existing requirements of Constitutional doctrine.

There has been some litigation involving questions at least analogous to our question. In Northwest Airlines, Inc., 47 NLRB 498 (1943) the National Labor Relations Board said:

> * * * We therefore reject the foregoing argument of the Company, which would lead to the result that all activities of a concern are exempt from the provisions of the Act (the National Labor Relations Act) if it (the Company) operates to any extent, however incidental, as a carrier by air.

The NLRB held, however, that in that case there was some substantial relation between the airline's activities there involved and its transportation functions, and therefore, since the National Mediation Board had not waived jurisdiction, dismissed the case.

In 1955 a union filed a petition with the NLRB for an election among Pan American's employees at Cape Canaveral, Florida, who performed work substantially identical with that performed at the Nuclear Research station in Nevada, involved in our instant case. The NLRB conducted a hearing upon the petition and then submitted the transcript of its proceedings to the National Mediation

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Board, the agency which administers the Railway Labor Act. The NMB advised the NLRB that in its opinion the Canaveral operation of Pan American was within the scope of the Railway Labor Act, and that the NMB therefore had jurisdiction over it. The NLRB acquiesced in the NMB's claim of jurisdiction and dismissed the union's petition. It said, 115 NLRB 493:

> We, therefore, affirm our opinion in Northwest Airlines, Inc. [47 NLRB 498 (1943)] that unless the NMB definitely declines to assume jurisdiction over such disputed airline employees, the Board will not assert jurisdiction. Accordingly we shall dismiss the petition.

The union there involved then argued before the NMB that the RLA was inapplicable. The NMB rejected the argument, in a long opinion, NMB File No. C-2202, which, we confess with deference, does not seem persuasive to us. In the course of the opinion the NMB said:

> The test is simple: Is the employer a common carrier by air engaged in interstate commerce? Does the individual perform any work as an employee? If both answers are in the affirmative, the Board's jurisdiction is clear.

In short, the NMB's stated view was that if an employee works for an airline as a pilot, a ground crew member, or a bench worker in the airline's shoe factory having no remotest relation to its business as an air carrier, he is governed by the distinctive set of labor laws written in the Railway Labor Act and administered by the National Mediation Board.

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The union in the Canaveral case and some of its members sought declaratory and injunctive relief against the assumption of jurisdiction by the NMB, in the United States District Court for the District of Columbia. That court dismissed their suit, in the case of Biswanger v. Boyd, 32 CCH Labor cases ¶ 70,840, saying, *inter alia*:

> The Court therefore concludes that the Act (RLA) is applicable and the asserted jurisdiction of the National Mediation Board is not only lawful but compulsive.

In the courts, the most significant litigation occurred in the Eighth Circuit. In the case of Jackson v. Northwest Airlines, 70 F. Supp. 501 (1947) the United States District Court for the District of Minnesota, in an opinion by Judge Nordbye, held that the Fair Labor Standards Act, and not the Railway Labor Act, applied to the length of the work week of employees who worked for an airline but whose work had no relation to air transportation. The FLSA provided for overtime pay for work above 40 hours in a week. The RLA provided for overtime for work above 48 hours. The FLSA, in its section 13(a), 29 U. S. C. § 213(b), says that its provisions shall not apply * * * to (4) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act.

The question before the court in the Northwest Airlines case was the question which is before us. The Fair Labor Standards Act, like the National Labor Relations Act, applies to the generality of labor in the United States. The FLSA covers the subjects of wages, hours of work and conditions of employment. The NLRA covers the subjects of union organizations, collective bargaining, the proper bargaining unit and the selection of the representative union.

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Both these generally applicable statutes are important charters of rights of working people. The Railway Labor Act is also an important charter for working people, but it is specially made for those who work in the transportation industry, and is so made for the purpose of assuring that transportation may not be interrupted.

We regard the District Court's decision in Northwest Airlines as directly in point. In further proceedings in the District Court, the court, 76 F. Supp. 121, rejected Northwest's asserted defense that its failure to comply with the FLSA was due to reliance upon an administrative ruling of an agency of the United States, a defense authorized in proper cases by the Portal to Portal Act.

Northwest Airlines appealed to the United States Court of Appeals for the Eighth Circuit. The court in Northwest Airlines v. Jackson, 185 F. 2d 74 (1950), approved the District Court's conclusion that the Railway Labor Act did not apply to Northwest's non-transportation activities, but reversed the District Court's determination that Northwest did not have a defense under the Portal to Portal Act.

In the Court of Appeals' opinion in Northwest Airlines this language from the District Court's opinion is quoted with approval:

> The Railway Labor Act was intended to apply only to transportation activities and that work which bears more than a tenuous, negligible and remote relationship to the transportation activities. It was not intended to apply to all work, regardless of its connection to transportation, merely because the company carrying on the

work included carrier activities within its company functions.

This opinion, already too long, will not be extended by a discussion of the numerous other precedents cited by the parties. None of them are very pertinent to our problem.

The order of the District Court is affirmed.**

(Endorsed) Opinion Filed Nov. 5, 1963.

Frank H. Schmid, Clerk.

**After the foregoing opinion was written, the court was advised that the National Mediation Board, on October 29, 1963, decided that it was required by the Railway Labor Act to assert jurisdiction over the project involved in this litigation. The Board stated no reason for its conclusion except the reason given by it in the Canaveral case, discussed in our opinion. We adhere, therefore, to what we had decided before receiving the advice referred to above.

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Opinion of the District Court of August 2, 1963

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PAN AMERICAN WORLD AIRWAYS, INC., *Plaintiff,* *vs.* UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; LOCAL UNION 1780, et al. *Defendants.*	Civil 560

FOLEY, District Judge. This is Civil Action No. 560, entitled Pan American World Airways, Inc., versus United Brotherhood of Carpenters and Joiners of America, et al.

Mr. R. L. Yordy, Project Manager of Pan American's Guided Missile Division at the Nevada Test Site, has testified in substance that, under the contract, defendants' Exhibit A in evidence, dated June 28, 1963, between the Space Nuclear Propulsion Office, an agency of the Atomic Energy Commission, and Pan American World Airways, Inc., Pan American had agreed to operate and maintain equipment and facilities and to perform preventive maintenance in regard to the air conditioning facilities, and to do painting and electrical work, employing mechanics and other helpers for such services, and in addition to do certain technical work involving, as I understand it, liquid and gaseous hydrogen and liquid and gaseous nitrogen. He testified that Pan American did not transport passengers, freight or mail to or from the test site, that no aircraft services were being provided, no parts were being produced

or processed, and no flight operations conducted; that his company did not store, service or repair aircraft in any way nor use its own aircraft in flying in and out of the fieldoport at the test site. Mr. Yordy testified further that the contract with the Space Nuclear Propulsion Office of the Atomic Energy Commission calling for Pan American's rendering of support service to the Nuclear Rocket Development Station of the Atomic Energy Commission involved performing the same general services as Pan American does per contract with the United States Air Force at Cape Canaveral, Florida, and Fort Huachuca, Arizona.

The Court indicated at the commencement of the hearing this morning that it should be first determined whether or not the Railway Labor Act was applicable to Pan America's activities at the test site. The defendant unions and members have relied heavily on the case of Northwest Airlines vs. Jackson (1947), decision of the District of Minnesota, 70 Fed. Supp. 501, and the same case on appeal, Northwest Airlines vs. Jackson, a 1951 decision of the Eighth Circuit, reported at 185 Fed. 2d 74, certiorari denied by the United States Supreme Court, 342 U. S. 812.

The ruling of the Northwest Airlines case is that the Railway Labor Act does not embrace activities other than those carrier activities and those related to them, and that modification work performed on army planes by Northwest Airlines under contract with the Government, which work was not necessary to Northwest's continued operation as an airline had such a remote, tenuous and negligible relationship to the transportation activities of the airline that they were not within the Railway Labor Act. The Court rejected the contention that if a carrier is subject to the Railway Labor Act with respect to any of its activities, including its

airline activities, that the Railway Labor Act subjects a carrier to its jurisdiction for all purposes and all activities. The Court held that the Railway Labor Act did not apply to the modification work merely because other activities were subject to the Railway Labor Act. The activity in litigation must be subject to the Act. The Court held that the Act never intended to embrace industries other than carrier activities and those things related to them. This Court has examined and considered the cases of Brittan v. Hudson & Manhattan R. Co., a decision of the Southern District of New York (1943), found in 50 Fed. Supp. 37; Keele v. Union Pacific R. Co., a 1948 decision of the Southern District of California, found in 78 Fed. Supp. 678; and the case of Roland v. United Airlines, a District Court decision of the Northern District of Illinois (1947), reported at 75 Fed. Supp. 25.

The Supreme Court of the United States in the case of Virginian R. Co. v. System Federation, a 1937 decision, 300 U. S. 515, 81 Law Ed. 789, a case wherein the status of back shop employees, whether or not they were under the Railway Labor Act, was in question. The Court stated, in part:

> "The activities in which these employees are engaged have such a relation to the other confessedly interstate activities of the petitioner that they are to be regarded as a part of them. All taken together fall within the power of Congress over interstate commerce. (Citing cases.) Both courts below have found that interruption by strikes of the back shop employees, if more than temporary, would seriously cripple petitioner's interstate transportation. The relation of the back shop to transportation is such

that a strike of petitioner's employees there, quite apart from the likelihood of its spreading to the operating department, would subject petitioner to the danger, substantial, though possibly indefinable in its extent, of interruption of the transportation service. The cause is not remote from the effect. The relation between them is not tenuous. The effect on commerce cannot be regarded as negligible."

The Supreme Court then went on to state:

"* * * It is the nature of the work done and its relation to interstate transportation which afford adequate basis for the exercise of the regulatory power of Congress."

Plaintiff relies on a decision of the National Mediation Board, November 9, 1950, File No. C-2505, entitled "In the Matter of Representation of Employees of the Pan American World Airways, Inc. (1) Mechanical and Ground Service Employees, (2) Stock and Stores Employees". Here, the International Association of Machinists applied to the National Mediation Board to investigate a representative dispute under Section 2, Ninth Subparagraph of the Railway Labor Act among (1) mechanic and ground service employees and (2) stock and store service employees, all employed by Pan American World Airways, Inc. at its Guided Missile Range Division in Florida. The Mediation Board concluded, under a certification of March 1, 1950 that Transport Workers of America was the duly designated and authorized representative of airline mechanics and that, under certification issued in Case No. R-2777, the opinion doesn't cite the date, the International Association

of Machinists was the duly designated representative of the stock clerks and employees. In rendering its decision, the Board said, in part:

> "The principal effort made by IAM during the hearing and in their brief was to justify their claim that those employees should be considered separate crafts or classes from other similar employees of the carrier on what they call a 'functional basis', this phrase relating to the functions performed by Pan American at the Cocoa base as distinguished from the functions performed as a common carrier at their other bases handling their airline operations.
>
> "Under this Board's policy which has been in existence for many years and is well known, all employees of a common carrier, either rail or air, who perform similar work on that carrier constitute a single craft or class for representation purposes under the Act. It is not disputed that the employees in question are employees of Pan American World Airways, Inc. The Guided Missiles Range Division is not a separate corporation; it is only one of several divisions of Pan American. It has generally the same organizational setup and is under the general direction of the same executive officers of Pan American as the other divisions. It is part and parcel of Pan American, performing the same plant maintenance and ground service work at Cocoa, with a few exceptions, as is done at the operations bases."

And then, concluding, the Mediation Board said:

> "The controlling factor is the nature of the work performed by these employees, not the 'functional'

reasons for which the base at Cocoa was established."

We are told by plaintiff's counsel that this decision of the Mediation Board was affirmed by the District Court of the District of Columbia in 1957 in an unreported decision, Civil No. 4490-57. It apparently is reported in 32 Labor Cases 440. We have been unable to locate that decision by telephone to the library of the State Supreme Court. However, since the courts are without power to review the certification of the National Mediation Board; we are in ignorance as to just what this decision in the District Court of Columbia held.

This Court is urged by plaintiff to adopt the views of the National Mediation Board which are contrary to the decision of the Eighth Circuit in the Northwest Airlines case, and to adopt the theory that the controlling factor is the nature of the work performed by the employee and not the "functional" reasons for which Pan American engaged in the activity at the Nevada Test Site.

This Court feels that the position of the Mediation Board is contrary to the spirit and intent of the National Railway Labor Act and, therefore, rejects the same and elects to follow what we feel the better reasoned and also the weight of authority represented by Northwest Airlines. If we disregard, as plaintiff urges and as the Mediation Board held in connection with plaintiff's Cape Canaveral activities, the functional reasons and establish as the controlling factor the nature of the work, it would seem to this Court, for example, that a painter properly within the National Railway Labor Act, while employed for maintenance of aircraft at an airfield, would still be governed

by the Railway Labor Act if the carrier for some reason should purchase a shoe factory and assign the painter to the shoe factory for maintenance painting.

Considering the verified complaint in this case, the affidavits, the memoranda, and arguments of counsel, this Court would, if the law would permit, pending final determination of this case, consider it on the merits, which of course we do not reach, readily enjoin picketing in this labor dispute, which appears essentially to be a jurisdictional dispute threatening to disrupt or interrupt vital defense work in which plaintiff is assisting the Atomic Energy Commission in development of nuclear rocket missiles. However, we can and do not reach this point. I hold that this Court does not have jurisdiction to grant the injunctive relief sought and that, based on plaintiff's verified complaint, its memoranda, oral and written, its representations, representations of counsel, and the testimony of Mr. Yordy, plaintiff's project manager, the activities of plaintiff at the Nuclear Rocket Development Station in Nevada bears only a tenuous, negligible and remote relationship to Pan American's transportation activities, and that since the Railway Labor Act in its application is limited to transportation and to those functions closely related thereto, then under Subsection (e) of Section 104 of Title 29, U. S. C., the Norris-LaGuardia Act, limiting the injunctive powers of the courts of the United States, is applicable. See Sinclair v. Atkinson, a 1962 decision of the Supreme Court of the United States, 370 U. S. 195, and this Court has no power to grant plaintiff the injunctive relief sought.

Therefore, the Motion for Preliminary Injunction is denied and the Temporary Restraining Order heretofore issued is dissolved.

Appendix A

Decision of National Mediation Board of July 10, 1956

NATIONAL MEDIATION BOARD
WASHINGTON

July 10, 1956
File No. C-2202

Mr. A. J. Hayes, International President
International Association of Machinists
1360 Connecticut Avenue, N. W.
Washington, D. C.

Re: Pan American World Airways, Inc.
Employees at Guided Missile Range
Base, Cocoa, Florida.

Dear Mr. Hayes:

This is in further reply to your letter of February 23, 1956, in which you requested an opportunity to present oral argument to the Board on the question of whether or not the National Mediation Board has jurisdiction over the employees at the Guided Missile Range Division of Pan American World Airways, Incorporated, at Cocoa, Florida.

As you know, the hearing requested was held on March 15, 1956, in the offices of this Board at which time your representatives and representatives of the Transport Workers Union of America and of the United Plant Guard Workers of America appeared. Subsequently, briefs from the interested parties were furnished to the Board. The record of the hearing and the views and arguments expressed in the briefs, as well as the record of the hearing held by the National Labor Relations Board in their Cases Nos. 10-RC-3208 and 10-RC-3275, have been carefully considered by this Board.

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Decision of National Mediation Board of July 10, 1956

The position taken by the International Association of Machinists in their argument and brief in opposition to the Board's previously expressed opinion that the employees of Pan American World Airways at Cocoa, Florida, are under the jurisdiction of the Railway Labor Act, as amended, is premised upon three principal contentions which we have considered, and our views with reference to them are set out hereinafter.

It is first contended by the International Association of Machinists that the Mediation Board, in expressing its opinion to the National Labor Relations Board did so without the benefit of a hearing and an opportunity by interested parties to present their views. It must be remembered that at the time our Board wrote to the National Labor Relations Board with reference to this matter on January 30, 1956, there had already been held, by an examiner of the NLRB, a hearing fully developing the facts. At this hearing representatives of the International Association of Machinists, the Transport Workers Union of America and the United Plant Guard Workers were present and evidence was taken from the Company and other interested parties as to the character of the work performed by employees in question. At that hearing there was also presented the issue of whether or not the National Labor Relations Board had proper jurisdiction over these particular employees. Briefs of the parties were presented. This entire record was made available to the National Mediation Board and was fully considered prior to our letter of January 30, 1956. Because of this opportunity for the parties to express fully their views, it was not deemed necessary for this Board to hold a duplicate hearing. The request of the International Association of Machinists for a hearing made February 23,

1956, was only for the opportunity to express argument to the Board. It was clearly stated in that letter that a duplicate hearing to ascertain the facts was unnecessary, as the record facts developed at the hearing before the National Labor Relations Board at Titusville, Florida, are adequate. This is further recognized in the statement of counsel for the Transport Workers Union and the International Association of Machinists at the hearing held on March 15, 1956, appearing at pages 41-44, inclusive, of the transcript of that proceeding.

In the light of the entire record in this case before the National Labor Relations Board and before this Board, it cannot reasonably be said the Mediation Board acted improperly, hastily, or without the opportunity for interested parties to express in full their views.

The second contention made by the International Association of Machinists is that the opinion of the Board expressed to the National Labor Relations Board was purely advisory and not made in the course of any representation proceeding where determination of the Board's jurisdiction was recognized. We do not feel our letter of January 30, 1956, to the National Labor Relations Board to be an advisory opinion as characterized in argument and in your brief. It was a specific assertion of jurisdiction, and was so regarded by the NLRB. Obviously, in situations where it might appear that the jurisdiction of different agencies of the Government overlap or are in conflict, the view of one agency expressed to the other is altogether proper. At the time this letter was written to the NLRB, the Board had before it, as explained above, a full record. Furthermore, there was pending before the Board an inquiry from the Transport Workers Union which was the

certificated organization covering employees in the mechanical craft or class on the Pan American World Airways.

On March 31, 1954, the Transport Workers Union advised the Board that a dispute existed between it and the Pan American World Airways over the claim of the TWU to represent the employees of the Pan American at the U. S. Missile Base, Cocoa, Florida. The organization requested the Board to investigate the dispute concerning the representation of these employees.

Under date of April 20, 1954, Pan American World Airways advised the Board with reference to this matter that no dispute existed which was subject to the Railway Labor Act.

On May 4, 1954, we requested the Transport Workers Union to be more specific in their request of the Board as to what it wanted the Board to investigate. We advised the organization, at that time, that the Carrier took the position that these employees were not subject to the Railway Labor Act.

Under date of June 24, 1954, the Transport Workers Union advised the Board it was their position that the employees were covered under the current agreement—Airline Mechanics and Ground Service Employees—and requested the Board to make a determination.

Under date of July 14, 1954, the Board advised Pan American World Airways and the Transport Workers Union that it would hold a public hearing on the question of jurisdiction of this Board over the employees involved. A hearing was never held on the merits for various reasons, among which was the fact that subsequent to the announcement that the Board would hold a hearing, the International Association of Machinists requested certification

under the Taft Hartley Act and made application for such to the National Labor Relations Board. The NLRB conducted a full hearing where the parties had an opportunity to present their facts and views. After this hearing was held by the NLRB, but before the NLRB had made a determination, the National Mediation Board felt it was its duty to advise the NLRB of its position. Accordingly, we advised that Agency that it was the opinion of the National Mediation Board that it has jurisdiction over these employees. This opinion was reached after review of the transcripts and briefs presented in the NLRB hearing. The NLRB thereafter dismissed the proceedings brought by the International Association of Machinists. The letter to the NLRB was not an advisory opinion, but a communication which this Board deemed its duty to send in light of the conflict existing between two groups as to which Board had jurisdiction. Having reached the conclusion that the employees at the Missile Base, insofar as their rights were concerned, are within the purposes and intent of the Railway Labor Act, it was the duty of this Board to so advise the NLRB.

The third and principal contention made by the International Association of Machinists is that the Board's opinion is contrary to law and conflicts with agency determinations and judicial decisions of long standing. It is interesting to note that no determinations of this Agency, the National Mediation Board are cited. In support of this contention, the International Association of Machinists relies principally upon the case of Jackson vs. Northwest Airlines, 185 F. 2d 74. In that case the question was whether or not the employees of the Northwest Airlines engaged in work at the modification center, which was work performed for the Air Force in modifying planes for war service, were em-

ployees within the meaning of the Fair Labor Standards Act. The Court found that the work performed at the modification center, on the bombers, was tenuous, remote and negligible with respect to the transportation activities of the airline, and found that such employees were under the Fair Labor Standards Act and not exempt from the overtime provision of that Act, which excluded employees subject to the Railway Labor Act. The court based its conclusion on the relation of the activities of the employees to transportation, and further found that the exemption provisions of the Wage and Hour Act must be construed liberally so as to effectuate the purpose of that Act to eliminate "substandard" labor conditions. The decision was primarily designed to give these employees overtime after 40 hours per week, as the 40 hour week was not then in effect for most rail and airline employees.

The Board does not feel bound by this decision for the reason that in the Jackson case, the issue involved the payment of overtime compensation, not the right of employees to organize for representation purposes. Title II of the Railway Labor Act, which relates to airlines, is written in simple unambiguous language: "All of the provisions of title I of this Act . . . are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce . . . and every air pilot or other person who performs any work as an employee . . ." The test is simple: Is the employer a common carrier by air engaged in interstate commerce? Does the individual perform any work as an employee? If both answers are in the affirmative, the Board's jurisdiction is clear.

The record made before the National Labor Relations Board and reiterated in the briefs of the parties discloses that

there is no material dispute as to the facts. It is admitted, by the parties, that Pan American World Airways is a carrier within the definition of Title II of the Railway Labor Act, as amended. It is further undisputed that the employees involved herein are performing, in general, plant maintenance work of the kind and character that is performed by similar employees for the same company at its bases where its planes are maintained. This work at Cocoa primarily consists of maintaining facilities used by other companies in the work prescribed for them by the Government at this Missile Base. The employees involved include painters, carpenters, electricians, plumbers, laborers, janitors, mechanics, welders, millwrights, metal workers and others closely connected therewith in the performance of such work. The kind of work the employees perform is identical with the work performed by other employees of the same craft at the regular established bases of Pan American World Airways. The departmental organization of Pan American World Airways at the Missile Base is similar to that in effect on the other divisions of Pan American and the executive controls from headquarters are the same as on other divisions.

The International Association of Machinists' brief states (page 7) that the only issue is whether Pan American World Airways in the performance of its operations at Cocoa is a common carrier by air, etc. They then proceed to urge upon us that this activity of Pan American World Airways at missile bases is so tenuous and remote from its activity as a carrier of persons or property that such activity at the missile base is outside of the contemplated jurisdiction of the Railway Labor Act. Whether or not this may be so in contemplation of the purposes of

statutes such as the Fair Labor Standards Act or the Walsh-Healy Act, or any other similar statutes is not the primary consideration. The principal question is whether the employees at Cocoa are engaged in activity so remote from the activity of the employer, as a carrier by air, that it may reasonably be said that the purposes of the Railway Labor Act will be achieved in the event such employees are excluded from the jurisdiction of the Act.

Suppose the position of the International Association of Machinists is adopted and the employees at the Missile Base are held not to be under the Railway Labor Act; and further suppose that sometime hereafter a labor dispute arises between such employees and their employer, the Pan American World Airways, and a strike is threatened with attendant picket lines. If picket lines were then to be established, it is reasonable to suppose that the main offices and air bases would be picketed. What effect would such picketing have upon the functioning of Pan American World Airways as a common carrier of persons or property?

It is the express purpose of the Railway Labor Act to avoid any interruption to commerce or to the operation of any carrier engaged therein and to accomplish such purpose the Act provides a number of steps that may be required of the parties for the protection of the public. If these employees are deemed to be excluded from the Act, then in the face of a serious labor dispute, the National Mediation Board would not be in a position to proffer its mediatory services under Section 5 of the Railway Labor Act; and if a labor dispute persisted and threatened to substantially interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service, then the Mediation Board could not notify the President so

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Decision of National Mediation Board of July 10, 1956

that he might create an emergency board, as provided in Section 10 of the Railway Labor Act.

In the light of the purposes of the Railway Labor Act to insure to the public, to the employees and to employers a means of settling disputes of the employees as to who may represent them for collective bargaining purposes and to settle disputes between employer and employees so as to avoid interruption to commerce, we must conclude that the relationship of employees performing the functions that are performed for Pan American at Cocoa, Florida Missile Base by its employees is not so tenuous and remote as to remove them from the jurisdiction of the Railway Labor Act.

The Board, therefore, concludes that it should not rescind its advice to the National Labor Relations Board regarding its jurisdiction over employees of Pan American World Airways at Cocoa, Florida.

By order of the NATIONAL MEDIATION BOARD.

/s/ E. S. Thompson

E. S. Thompson
Executive Secretary

cc-to: E. M. Goulard, Asst. VP, PAWA
J. F. Horst, Intl. VP, TWU
F. M. Kleiler, Exec. Secy, NLRB
E. J. Hickey, Atny. Tower Bldg., Wash., D. C.
E. S. Bunin, Atny. UPGW, 1503 Ford Bldg., Detroit 26
O'Donnell & Schwartz, Atnys. 2 W. 45th St., N. Y.

Appendix A

Decision of National Mediation Board of November 9, 1956

NATIONAL MEDIATION BOARD
WASHINGTON

In the matter of REPRESENTATION OF EMPLOYEES of the PAN AMERICAN WORLD AIRWAYS, INC. (1) Mechanical and Ground Service Employees (2) Stock and Stores Employees	FILE NO. C-2505 DISMISSAL November 9, 1956

On July 16, 1956, the International Association of Machinists, AFL-CIO, hereinafter referred to as IAM filed an application with this Board to investigate a representation dispute under Section 2, Ninth of the Railway Labor Act among (1) Mechanical and Ground Service Employees and (2) Stock and Stores Employees, employed by Pan American World Airways, Inc. hereinafter referred to as the carrier, at its Guided Missiles Range Division, Cocoa, Florida. In transmitting this application, IAM stated they seek to represent these employees as separate crafts or classes because they "are employed in a separate and functionally distinct operation of the employer and have special and distinct interests apart from other employees of the company." On August 7, 1956, the IAM filed an amended application for the same group of employees, identical with the application of July 16, except for the number of employees and number of cards submitted. In view of proceed-

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ings heretofore had before this Board and the National Labor Relations Board, more specifically set forth below, the applications identified above were filed by the IAM without conceding that the National Mediation Board has jurisdiction of the carrier and the employees working at the Guided Missiles Range Division, Cocoa, Florida.

On March 1, 1950, in Case R-2225, the Board certified the Transport Workers Union of America, CIO, hereinafter referred to as TWU, as the representative of the craft or class of Airline Mechanics of the carrier. Also, on December 7, 1953, the Board in Case R-2777 certified the IAM as representative of the craft or class of stock clerks of the carrier.

TWU, when notified of this application, objected to the investigation on the ground that the plant maintenance and ground service employees are now covered by the current agreement between TWU and the carrier and urged the Board to dismiss the IAM application and "indicate to all parties concerned that the employees of the Guided Missile Range Division of Pan American World Airways, Inc. are employees of Pan American World Airways, Inc. within the meaning of the existing certification and collective bargaining agreement between the Transport Workers Union of America and Pan American World Airways, Inc."

In view of the contentions of the two organizations, the Board ordered a public hearing to be held in its Washington Office at 10:00 A. M. Tuesday, August 14, 1956, on the question of whether separate crafts or classes exist for employees of the carrier employed in the Guided Missiles Range Division.

The IAM on August 19, 1955 filed an application with the National Labor Relations Board for an election among

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certain employees of the Pan American World Airways at the Guided Missiles Range Division, Cocoa, Florida. Prior thereto, on March 31, 1954, TWU had advised the National Mediation Board that a dispute existed between it and Pan American over claim that TWU represented the carrier's employees working at the Guided Missiles Range Division, Cocoa, Florida. TWU requested this Board to investigate the dispute concerning the representation of these employees but it did not file a formal application for the Board's services under Section 2, Ninth of the Railway Labor Act.

On June 24, 1954, TWU further advised this Board that it was their position that the employees in question were covered under their current agreement for airline mechanics and ground service employees of Pan American, and requested the Board "to make a determination in this case."

The carrier said:

> "The operation which Pan American is conducting at Cocoa under contract with the United States Air Force bears so remote a relationship to our regular business as an international air transportation carrier that we are convinced, in view of the holding of the United States Circuit Court of Appeals, Eighth Circuit in the case of *Northwest Airlines* v. *Jackson*, 185 F. 2nd 74, that it is not subject to the provisions of the Railway Labor Act."

In view of that position, the carrier regarded the then current agreements with TWU made under the Railway Labor Act to be inapplicable. The dispute between TWU and the carrier was considered by the Board in Executive Session on July 12, 1954. It directed that a public hearing

be held on the question of the jurisdiction of this Board over the employees involved. No application was made by TWU for this Board's mediation services under Section 5 or Section 6 of the Act. No hearing was held on this subject at that time.

On October 19 and 20, 1955 a hearing was held by the NLRB on the petition filed with that agency by the IAM. The transcripts and briefs filed in that proceeding were examined by the members of the National Mediation Board. On January 30, 1956, the Executive Secretary of the National Mediation Board advised the NLRB as follows:

> "The transcripts and briefs which you forwarded with your letters of November 17th and 18th have been reviewed by the members of this Board. I have been directed to advise you that on the basis of information developed in the hearing conducted by your examiner at Titusville, Florida, the National Mediation Board is of the opinion that it has jurisdiction over the employees involved in this dispute under the provisions of the Railway Labor Act, as amended."

On February 23, 1956, the IAM requested permission to present oral argument to this Board limited to the question as to whether the National Mediation Board has jurisdiction over employees of the carrier at the Cocoa Base. In that request, the IAM advised that it was not their purpose to present additional evidence because it was their belief that the record facts developed before the National Labor Relations Board were adequate. Although opposed by TWU, argument on the record was held by this Board on March 15, 1956.

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On July 10, 1956, this Board rendered its opinion on the issues raised by the parties. For reasons fully set forth in that opinion, and more specifically made a part hereof, the Board concluded that it should not rescind its advice to the National Labor Relations Board regarding its jurisdiction over employees of Pan American World Airways, Inc. at Cocoa, Florida.

On July 16, 1956, the instant application followed with a request for a public hearing on the issue of a proper craft or class. The Board directed that a hearing be held on August 14, 1956. It was held at the designated time and place before Chairman Robert O. Boyd and Board Member Leverett Edwards. Appearances were made by TWU, IAM, and the carrier. Full opportunity was given the parties to present evidence, examine and cross-examine witnesses. Both organizations filed briefs after the hearing.

The occupational classifications of the employees covered by the IAM application are as follows:

> "1. All mechanical and ground service employees at the Company's Guided Missiles Range Division, Cocoa, Florida, including, but not limited to, painters, electricians, truck drivers, high pressure air men, refrigerator mechanics, plumbers, pipe fitters, heavy equipment operators, carpenters, powerhouse operators, Diesel mechanics, automotive cleaners, masons, air-conditioning operators, heating plant operators, liquefied gas mechanics, tire repairmen, water and sewage machinists, sequencer mechanics, sign painters, chauffeurs, water plant operators, janitors, laborers.

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"2. Stock and stores employees at the Company's Guided Missiles Range Division located at Cocoa, Florida."

In the Board's determination in Case R-1447, issued October 1, 1945, it was found that plant maintenance mechanics and ground service employees of airlines are a part of the craft or class of airline mechanics. The IAM does not dispute the fact that these employees at the Guided Missiles Range Division have the same skills and generally perform the same work at the Missile Base as is the case with plant maintenance mechanics and ground service employees of Pan American at its other bases handling air line operations. In fact, IAM on Page 3 of their brief makes the following statement:

> "With the exception of a few positions, the duties of which are peculiarly related to the fueling and launching of guided missiles, the work performed by these employees is basically similar to that performed by the mechanical and ground service personnel of Pan Am at its common carrier air terminals."

The principal effort made by IAM during the hearing and in their brief was to justify their claim that these employees should be considered separate crafts or classes from other similar employees of the carrier or what they call a "functional basis", this phrase relating to the functions performed by Pan American at the Cocoa base as distinguished from the functions performed as a common carrier at their other bases handling their airline operations.

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Decision of National Mediation Board of November 9, 1956

Under this Board's policy which has been in existence for many years and is well known, *all* employees of a common carrier, either rail or air, who perform similar work on that carrier constitute a single craft or class for representation purposes under the Act. It is not disputed that the employees in question are employees of Pan American World Airways, Inc. The Guided Missiles Range Division is not a separate corporation; it is only one of several divisions of Pan American. It has generally the same organizational setup and is under the general direction of the same executive officers of Pan American as the other divisions. It is part and parcel of Pan American, performing the same plant maintenance and ground service work at Cocoa, with a few exceptions, as is done at the operations bases. The controlling factor is the nature of the work performed by these employees, not the "functional" reasons for which the base at Cocoa was established.

It may be noted here that the Board has recently conducted a representation election among plant guards employed by Pan American on a system-wide basis, including the guards employed at the Cocoa base, Case R-3076, and on September 7, 1956, issued a certification to the United Plant Guard Workers of America as bargaining representative.

CONCLUSION

Based on the entire record in this case, including the record of hearing held before the NLRB examiner in their case 10-RC-3275 the National Mediation Board finds as follows:

1. The carrier and employees in this case are respectively a carrier and employees within the meaning

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of the Railway Labor Act, as amended; that this Board has jurisdiction over the Dispute alleged herein and that the interested parties have been given due notice of investigation.

2. Under certification issued in Case R-2225, the Transport Workers of America, AFL-CIO. is the duly designated and authorized representative of the craft or class of airline mechanics employed by Pan American Airways, Inc.

3. Under certification issued in Case R-2777, the International Association of Machinists is the duly designated and authorized representative for the purposes of the Railway Labor Act of stock clerks, employees of Pan American World Airways, Inc.

4. The plant maintenance mechanics and ground service personnel of Pan American, also the stock clerks, employed at the Guided Missiles Range Division at Cocoa, Florida, are not separate crafts or classes for representation purposes under Section 2, Ninth, of the Railway Labor Act.

Based upon the findings above, the application of IAM dated July 16, 1956, as amended, August 7, 1956, is dismissed.

By direction of the NATIONAL MEDIATION BOARD.

E. C. Thompson
Executive Secretary

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Decision of National Mediation Board of October 29, 1963

NATIONAL MEDIATION BOARD
WASHINGTON

October 29, 1963.

Re: File No. C-3367

Air Transport Division
Transport Workers Union of America, AFL-CIO
80-07 Broadway
Elmhurst 73, New York

Attention: James F. Horst
International Vice President

Gentlemen:

On July 23, 1963, the Transport Workers Union of America, AFL-CIO, invoked the services of this Board requesting that the Board assert its jurisdiction over certain operations and employees of Pan American World Airways, Inc., employed at the Nuclear Rocket Development Station (NRDS) at the Nevada Test Site, and further clarify existing certifications to establish the right of TWUA to represent said employees under the Railway Labor Act.

This case was docketed by the Board under the above-stated number and a hearing was scheduled and held at Las Vegas, Nevada, on August 20 and 21, 1963, on the preliminary question of the Board's jurisdiction under the Railway Labor Act over said Company and its employees at that site.

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Decision of National Mediation Board of Oct[illegible]

The Building Trades Department, AFL-CIO, and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, AFL-CIO, requested and received permission from the Board to intervene and participate in this hearing. The parties before the Board at the hearing held in Las Vegas, in addition to the two organizations mentioned in the preceding sentence, were: TWUA and Local 525 of that organization; Building and Construction Trades Council of Clark, Lincoln, Nye, and Esmeralda Counties, Nevada, AFL-CIO, its affiliated Local Unions; the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Teamsters Local Union No. 631, IBT; the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, and Culinary Workers Union, Local 226, Las Vegas, Nevada, HRE&BIU, AFL-CIO. In addition thereto, appearances were made by Pan American World Airways, Inc., and the Atomic Energy Commission. The latter two were permitted to participate to the extent of furnishing the Board with technical advice and guidance.

All the foregoing participants were given permission to file post-hearing briefs on the question of the Board's jurisdiction. With the exception of the Atomic Energy Commission, all the aforesaid did so. These briefs were originally scheduled to be received on September 21, 1963. At the request of one of the parties, this time was extended until October 1, 1963, at which time they were received.

In their respective briefs, Building and Construction Trades Council of Clark, Lincoln, Nye, and Esmeralda Counties, Nevada, AFL-CIO; its affiliated Local Unions; International Brotherhood of Teamsters, Chauffeurs,

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Warehousemen and Helpers of America and Teamsters Local Union No. 631, IBT, as well as the Building and Construction Trades Department, AFL-CIO, requested permission to argue orally before the Board before a determination on the issue of jurisdiction was made. The Board has considered this request. In view of the extensive briefs submitted, and the full record made in the hearing, the Board has decided that oral argument is not required; and hence the request is denied.

The Board has considered all the evidence and argument submitted to it in this proceeding. It has also carefully reviewed the statutory and judicial citations furnished by the parties. Based on the record before it, the National Mediation Board finds as follows:

1. The carrier and the employees involved are respectively a carrier and employees within the meaning of the Railway Labor Act.

2. The employees of Pan American World Airways, Inc., working for the Space Nuclear Propulsion Office (SNPO) project at the Las Vegas Test Site are employees of a carrier subject to the provisions of the Railway Labor Act.

3. The activities in which these employees of the carrier, who are based at the Nevada Test Site, are engaged have such a functional relationship to the over-all operations of this carrier that assertion of jurisdiction is mandated by the statute.

4. At an appropriate time and at an appropriate place, the Board shall conduct a hearing as to the applicability of existing certifications to the employees of

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Pan American World Airways, Inc., working under the existing agreement between said carrier and SNPO at the Las Vegas Test Site, or other unit determinations which may be made on proper application under the statute.

By direction of the NATIONAL MEDIATION BOARD.

Very truly yours

E. C. Thompson

E. C. THOMPSON
Executive Secretary

cc: All parties and participants in the August 20 and 21 hearing.

APPENDIX B

Statute Involved

RAILWAY LABOR ACT, 45 U. S. C. §§ 151-188 (1958)

§ 151, 48 Stat. 1185 (1934). Definitions.

When used in this chapter and section 225 of Title 28 and for the purposes of said chapter and section—.

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier" * * *

* * *

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however*, That no occupational classification made by order of the Interstate Commerce Comission shall be construed to define the crafts according to which railway employees may be organized by

their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Commission.

* * *

§ 151a. 48 Stat. 1186 (1934). General purposes.

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matters of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

§ 152. 48 Stat. 1186 (1934). General duties.

First. **Duty of carriers and employees to settle disputes.** It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. **Consideration of disputes by representatives.** All disputes between a carrier or carriers and

its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

* * *

Seventh. **Change in pay, rules, or working conditions contrary to agreement or to section 156 forbidden.** No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

* * *

Ninth. **Disputes as to identity of representatives; designation by Mediation Board; secret elections.** If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of repre-

sentatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

* * *

§ 155. 48 Stat. 1195 (1934). Functions of Mediation Board.

First. **Disputes within jurisdiction of Mediation Board.** The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said

Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 160 of this title) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this chapter.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 160 of this title, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

* * *

§ 156. 48 Stat. 1197 (1934). Procedure in changing rates of pay, rules, and working conditions.

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termina-

tion of conferences without request for or proffer of the services of the Mediation Board.

* * *

§ 160. 44 Stat. 586 (1926). 48 Stat. 1197 (1934). Emergency Board.

If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this chapter and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however*, That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

* * *

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

§ 181. 49 Stat. 1189 (1936). Application of sections 151, 152, and 154-163 to carriers by air.

All of the provisions of sections 151, 152, and 154-163 of this title are extended to and shall cover every common

carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

§ 182, 49 Stat. 1189 (1936). Same; duties, penalties, benefits, and privileges.

The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of sections 151, 152 and 154-163 of this title shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of "carrier" and "employee", respectively, in section 151 of this title.

§ 183, 49 Stat. 1189 (1936). Disputes wtihin jurisdiction of Mediation Board.

The parties or either party to a dispute between an employee or a group of employees and a carrier or carriers by air may invoke the services of the National Mediation Board and the jurisdiction of said Mediation Board is extended to any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to an adjustment board, as hereinafter provided, and not adjusted in conference between the parties, or where conferences are refused.

Appendix B
Statute Involved

The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

The services of the Mediation Board may be invoked in a case under sections 181-188 of this title in the same manner and to the same extent as are the disputes covered by section 155 of this title.

§ 184, 49 Stat. 1189 (1936). System, group, or regional boards of adjustment.

The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on April 10, 1936 before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of sections 181-188 of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 153 of this title.

* * *

APPENDIX C

Affidavit of Donald W. Hunt, Sworn to August 12, 1963

(R. 218-237)

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PAN AMERICAN WORLD AIRWAYS, INC., *Appellant,* vs. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS, LOCAL UNION 1780, et al., *Appellees.*	No. 18822

AFFIDAVIT OF DONALD W. HUNT IN SUPPORT OF MOTION FOR INJUNCTION PENDING APPEAL

STATE OF FLORIDA, County of Brevard } ss.:

DONALD W. HUNT, having been first duly sworn, deposes and says:

1. I have been in the employ of PAN AMERICAN WORLD AIRWAYS, INC. ("Pan Am") more than twenty years, having started in 1942 in the maintenance operations department, in what was then the Pacific-Alaska Division at San Francisco, California. In 1944, I was assigned by Pan Am as engineering officer in connection with Pan Am's operations in various islands in the Pacific. In 1948, I became a member of the staff of the Industrial Relations Department of the Pacific-Alaska Division and continued in that department, becoming assistant to the manager. In 1960, I was transferred to become Industrial Relations Manager of Pan Am's Guided Missiles Range Division, at Cape Canaveral,

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Florida. It is that position which I currently hold; my duties include the supervision of labor relations at the Nuclear Rocket Development Station ("NRDS") near Las Vegas, Nevada, as well as of those at Cape Canaveral.

2. I make this affidavit, in support of Pan Am's motion for an injunction pending the hearing and determination of the appeal herein, to put before the Court additional evidence that Pan Am's operations at NRDS are an integral part of its entire operation and that its functions at NRDS are the same as those at Cape Canaveral, which have been determined by the National Mediation Board to be subject to the Railway Labor Act. Appended hereto and made a part hereof as Exhibit A, is the letter ruling of the National Mediation Board dated July 10, 1956, reference to which is made in the determination of the National Mediation Board of November 9, 1956 dismissing the request of the International Association of Machinists to represent mechanics and ground service employees at Cape Canaveral and certifying the Transport Workers Union as the representative of those employees in accordance with its Pan Am system-wide designation and contract. (Exhibit 2 to affidavit of Murray Gartner, dated August 8, 1963 and filed herein).

3. Like me, Richard L. Yordy, the Project Manager for Pan Am at NRDS is a long-time employee of Pan Am, having been first employed by its Latin American Division at Miami, Florida, in 1946. He was in the Communications Department of that division for seven years, having particular responsibility for radio and teletype facilities. In 1953, he was transferred to Cape Canaveral as Manager and in 1958, he became the Division Manager of Pan Am's

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Guided Missiles Range Division which includes Cape Canaveral, NRDS, and other similar facilities.

4. Kenneth Murphy, who is the Superintendent of Production Control at NRDS, was first employed by Pan Am in 1941 as a mechanic in its Pacific-Alaska Division at San Francisco, California. He then became Warranty Claims Supervisor in San Francisco, and later was transferred to New York as assistant to the Engine Overhaul Shop superintendent. Still later, he was made Supervisor of Production Control at Cape Canaveral, Florida, and then promoted to his present position at NRDS.

5. In addition to the fact that the supervisory personnel at NRDS, as stated above, have a long history of employment in the various divisions of Pan Am, most recently at the Cape Canaveral facility of the Guided Missiles Range Division, the employees hired in the class or craft of airline mechanics and ground service employees have been hired to fill numerous jobs the descriptions of which are precisely the same as those applicable to and used at Pan Am's operation at Cape Canaveral. In other words, the job descriptions, for example, for "mechanic, electrical plant facilities" or "mechanic, painter, industrial", and all other job descriptions of some 50 to 75 jobs are precisely the same at NRDS as they are at Cape Canaveral. In fact, five mechanics, in several different classifications, have been transferred from Cape Canaveral to NRDS, and are now working there.

6. All new employees at NRDS have been given Pan Am's "Employees' Handbook" describing the operations of the company and its divisions with particular reference to the Guided Missiles Range Division and notifying the

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employees of the rights and benefits which they have in common with all other Pan Am employees, including holidays, vacations, insurance, travel discount, sick leave and retirement income plan.

7. In short, many of the supervisory personnel at NRDS have been assigned to that location from Cape Canaveral, many of them having previously worked in other divisions of the company. All of the hourly-rated employees at NRDS have been hired to perform precisely the same jobs as their counterparts at Cape Canaveral are performing, under the same job descriptions. All of them are employees of Pan Am in exactly the same sense and with exactly the same terms and conditions of employment as employees of other divisions of the company, including divisions engaged in air transportation, such as the Pacific-Alaska Division (now merged into the Overseas Division) and the Latin American Division.

/s/ DONALD W. HUNT
Donald W. Hunt

Subscribed and sworn to before me
this 12th day of August 1963.

/s/ MARY M. BREADY
Mary M. Bready,
Notary Public

Notary Public State of Florida at Large
My Commission Expires Aug. 17, 1966
Bonded Through Fred W. Diestelhorst

(SEAL)

Exhibit A of this affidavit is reproduced in Appendix A, *supra*, at pages 23a-31a.

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NRDS, insofar as they are or will be represented by unions, under Pan Am's contract with the Transport Workers Union ("TWU"), are in the class or craft of Mechanics and Ground Service Employees, and are covered by that contract. Pan Am has no dispute with TWU.

6. Despite the fact that the picket lines established by the Building Trades and other unions did not represent any dispute between Pan Am and its employees, the purpose and effect of the picketing was to prevent deliveries of supplies essential both for the maintenance of the Station and for the performance of tests. It seems clear that if such picketing is allowed to resume, it will result in similar and additional disruption of the functioning of NRDS, as follows:

a. *Delivery of Materials from Mercury Camp Site.* Other contractors' employees, members of the picketing unions, would again, as they did during the picketing of July 30 and 31, 1963, refuse to load Pan Am's trucks at the Mercury, Nevada, support area (adjacent to NRDS) with supplies and materials for NRDS. Among the materials and supplies necessary to support the operations at NRDS, which normally come from the Mercury Camp Site, delivery of which would be prevented, are:

(1) Mechanical parts needed for operational changes to systems, to meet engineering specifications for particular tests; the lack of these parts would prevent the carrying out of tests;

(2) Air conditioning repair parts for preventative maintenance of air conditioning units; the lack of these parts would result in deterioration of delicate electronic equipment which must be maintained in a temperature-controlled environment;

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(3) Diesel fuel; the lack of fuel delivery would require the cancellation of all tests, almost immediately, since NRDS has storage facilities for only enough diesel fuel to support one test. When the stored quantity has been used, all further test activity would have to be discontinued;

(4) High pressure gases and liquid hydrogen; these items cannot be stored except for immediate use in scheduled tests, so that the disruption of delivery would prevent any additional tests;

(5) Operational supplies, such as chemicals used to treat water; lack of these supplies would quickly begin to affect the health and safety of NRDS personnel;

(6) Gasoline for transportation within NRDS; current gasoline storage facilities are limited to a one-week capacity.

b. *Other Delivery Failures Affecting Safety.* If picketing is resumed, other deliveries will be prevented, with an incalculably harmful effect on the safety of the personnel and installations at NRDS:

(1) Protective clothing used by technicians to monitor radiation could not be processed for laundering;

(2) Unavailability of spare parts for cafeteria refrigeration systems would endanger the food supply stored there;

(3) Unavailability of spare parts for maintaining the piping for the water and fire systems would prevent proper maintenance of those systems, resulting in increased danger of fire damage for all NRDS installations;

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(4) Unavailability of necessary electrical parts would seriously hamper preventative maintenance of systems for power distribution.

7. To sum up, resumption of picketing by the defendant unions would immediately interfere with and prevent the performance by Pan Am of its support functions at NRDS, and curtail and very shortly completely stop all operations at NRDS, thus irreparably delaying the nuclear rocket program of the United States and endangering the entire installation at NRDS. By preventing Pan Am's performance of its contract with the AEC, such picketing will greatly and irreparably damage the reputation of Pan Am as a responsible contractor and injure it incalculably in its business.

8. Since I was formerly Division Manager of Pan Am's Guided Missiles Range Division at Cape Canaveral, I know that the support services performed there by Pan Am under contract with the United States Government were in all substantial respects similar to those required to be performed under Pan Am's contract covering NRDS. I also know that all Pan Am's operations at Cape Canaveral, in accordance with the decision of the National Mediation Board, in 1956, are subject to the Railway Labor Act and Pan Am's Mechanics and Ground Service employees at Cape Canaveral were, and are covered by Pan Am's collective bargaining agreement with the Transport Workers Union, for at least the past seven years. Under the Railway Labor Act, the said current agreement with the TWU is required to be, and is, Pan Am system-wide in its coverage and applies to all employees in the relevant class or craft wherever employed by Pan Am. I respectfully submit, therefore, that

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this Court should not permit unions having no relationship with Pan Am, and no claim to represent its employees, to picket with the purpose and effect of preventing Pan Am from carrying out its contractual obligations to the United States Government and its statutory obligations under the Railway Labor Act.

/s/ RICHARD L. YORDY
Richard L. Yordy

Sworn to before me this
6th day of August, 1963

/s/ MARY E. LEAVITT
Notary Public for the
State of Nevada
County of Clark

My commission expires on Nov. 8, 1965

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Affidavit of Richard L. Yordy, Sworn to December 2, 1963

(R. 387-391)

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

[SAME TITLE]

STATE OF NEVADA }
COUNTY OF CLARK } ss.:

RICHARD L. YORDY, having been first duly sworn, deposes and says:

1. I am, and have been since June 7, 1963, the Project Manager for Pan American World Airways, Inc. ("Pan Am"), which renders support services at the Nuclear Rocket Development Station ("NRDS") in Nevada pursuant to a contract with the United States Atomic Energy Commission ("AEC"). It is my responsibility to supervise the discharge of Pan Am's obligations under that contract. For the prior five years, I was Pan Am's Division Manager for its Guided Missiles Range Division ("GMRD") at Patrick Air Force Base, Cape Kennedy (formerly Cape Canaveral), Florida. From 1953 to 1957 I was Base Manager at Cape Canaveral. For the seven years prior thereto, I held a variety of supervisory and administrative operations positions on Pan Am's airline system. Accordingly, I am completely familiar with the nature of Pan Am's operations at NRDS, at Cape Canaveral and on its airline system and I have personal knowledge of the facts hereinafter set forth.

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2. I make this affidavit in support of Pan Am's application for a stay pending its petition to the Supreme Court of the United States for a writ of certiorari. This affidavit is submitted to demonstrate the identity of Pan Am's activities and of the services of its employees at NRDS, Cape Kennedy and on its airline system, as well as the close interrelationship and unity of labor relations concerning NRDS, Cape Kennedy and the airline system.

3. *Identity of Services Performed By Pan Am's Employees, And of Pan Am's Activities, At NRDS, Canaveral and On the Airline System.*

(a) The services rendered by Pan Am's employees at NRDS are, in almost every instance, identical to the services rendered by Pan Am's employees at Cape Kennedy (Canaveral) and on its airline system. Thus, for example, Pan Am's employees at NRDS, Canaveral and on the airline system render or may be required to render the following services, among others: operation and maintenance of high-pressure gas and liquid systems; measurement, monitoring and control of radiation; installation and maintenance of electronic instrumentation systems; operation and maintenance of utilities; routine and preventive maintenance of facilities; operation of computer systems, laboratories and shops; procurement, warehousing, and distribution of materials and supplies; engineering design and planning; preparation of operating and maintenance manuals and formulation of procedures; custodial; clerical; and ground transportation. A particular service, where ever it may be performed, requires identical skills, training and execution of the employees who render it and is performed by employees in the same job classification.

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(b) Accordingly, Pan Am's activities at NRDS are in most respects the same as or substantially similar to activities customarily and normally engaged in by it at Canaveral and on the airline system. The services recited in (a) above, identically performed by Pan Am employees at NRDS, Canaveral and on the airline, necessarily are an integral part of those Pan Am activities at NRDS, Canaveral and on the airline, which are the same. Thus, for example, performance by Pan Am employees of identical services of installation and maintenance of electronic equipment at NRDS, Canaveral and on the airline is necessary only because Pan Am is concerned with the same activity of installing and maintaining electronic equipment at NRDS, Canaveral and on the airline.

(c) Furthermore, the fact that Pan Am has engaged in similar activities elsewhere than at NRDS was a major reason why Pan Am was selected as the support services contractor at NRDS. A good illustration of this fact is contained in the Affidavit of Bob P. Helgeson (Chief of the Space Nuclear Propulsion Office—Nevada Extension), sworn to the first day of December, 1963, and submitted in support of Pan Am's present application. At page 5 of his affidavit, Mr. Helgeson states that one of the reasons why Pan Am was selected to render support services at NRDS was that "it had acquired substantial technical experience in the handling and uses of liquid hydrogen and high pressure gases and the techniques of radiation control" at Canaveral. In fact, long before Pan Am began rendering support services at Canaveral, its employees on its airline system engaged, as they do today, in the use, handling and maintenance of high pressure gas and liquid systems and,

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commencing primarily with the advent of jet aircraft, its airline employees have been continuously engaged in various aspects of radiation monitoring and control.

4. *Inter-Relationship of Labor Relations Matters.* Many labor relations matters involving Pan Am's employees at NRDS have substantial impact upon labor relations concerning Pan Am's employees at Cape Kennedy (Canaveral) and its employees on its airline system. Conversely, labor relations matters concerning Pan Am's employees elsewhere than at NRDS will frequently affect its NRDS employees. In view of the similarity of work performed by Pan Am, and the identity of services rendered by its employees, throughout Pan Am's operations, common questions of labor policy, administration and interpretation continuously arise. Furthermore, wage rate, fringe benefit and other compensation matters present common problems since, in most cases, the employees involved (where ever they may be located) perform services identical, or substantially identical, to those performed by Pan Am employees at other locations. And, Pan Am employees have transferred from jobs on the airline to jobs at Canaveral and NRDS. These unity of interests and community of common questions among Pan Am's employees are paramount considerations in the formulation of overall Pan Am labor policy which is generally administered and coordinated at Pan Am's system headquarters in New York City. Moreover, the close relationship between Pan Am's employees at NRDS, Canaveral and on the airline system very obviously provides the basis upon which disputes arising in one area, and possible consequent union activity there, may spread to the others, because of a community of interest

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among the various employees and because all the employees are employed by a single employer—Pan Am.

/s/ RICHARD L. YORDY
Richard L. Yordy

(SEAL)

Sworn to before me this
2nd day of December, 1963

/s/ IRENE A. KUEPPER
Notary Public
State of Nevada
County of Clark

My commission expires: April 26, 1967

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Affidavit of Bob P. Helgeson, Sworn to December 1, 1963

(R. 369-382)

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

[SAME TITLE]

STATE OF NEVADA }
COUNTY OF CLARK } ss.

BOB P. HELGESON, having been first duly sworn, deposes and says:

1. I am now, and have been since August 1, 1962, Chief of the Nevada Extension of the Space Nuclear Propulsion Office ("SNPO-N"), an office created jointly in 1962 by the United States Atomic Energy Commission ("AEC") and the National Aeronautics and Space Administration ("NASA") to administer the Nuclear Rocket Development Station ("NRDS"), formerly known as Area 400 of the Nevada Test Site. NRDS is the exclusive site for system tests in the Nuclear Rocket Development Program ("ROVER"). I have, moreover, for the last seven years, been directly concerned with ROVER in various capacities from Industrial Staff Member with the Los Alamos Scientific Laboratory to engineering management positions in industry with various companies concerned with the ROVER project. Consequently, I am thoroughly conversant with the operations at NRDS and with the reactor, engine, vehicle, and facilities aspects of the entire ROVER program, and I am personally familiar with the facts hereinafter set forth.

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2. I make this affidavit in support of the application herein by appellant Pan American World Airways, Inc. ("Pan American" which is the support services contractor for NRDS) for a stay pending its petition to the Supreme Court of the United States for a writ of certiorari. Because of the extreme importance of that application, to the United States space program, I set forth in some detail the nature of the activities that will be affected by a resumption of picketing (which seems imminent) and the effect that such picketing will have on those activities.

3. *The Nature of the ROVER Program.* The ROVER program, broadly stated, is a joint program of the AEC and NASA and is concerned with the research and development of nuclear powered engines and vehicle stages propelled by those engines for space travel with capabilities substantially in excess of the performances now obtained from chemically propelled rockets. ROVER is a significant part of the over-all United States advanced space program; the total nation-wide cost of the ROVER Program for the Fiscal Year 1963 was approximately $173,000,000; there are some $60,000,000 worth of ROVER facilities now at NRDS (with construction of an additional $100,000,000 worth of facilities anticipated for the future); and the base operating budget for NRDS for the Fiscal Year 1963 was about $6,000,000 exclusive of payrolls of some prime contractors and many items of special test equipment. The President's Budget for Fiscal Year 1964 (currently before Congress) contains a substantial increase for ROVER over Fiscal Year 1963.

4. *The Nature and Function of NRDS.* NRDS is a primary research and development test facility of the ROVER program and encompasses some 90,000 acres. The

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test control point at NRDS is situated about 26 miles from Camp Mercury, Nevada, and about 90 miles from Las Vegas, Nevada. There are currently employed at NRDS some 1200 employees. Located at NRDS are two currently active test cells for the development of nuclear reactors. Facilities are now being designed and built to test nuclear engines incorporating those reactors. Various ROVER participants, such as SNPO, the Los Alamos Scientific Laboratory, Marshall Space Flight Center, Aerojet General Corporation, Westinghouse Electric Corporation, and Lockheed Missiles and Space Company, now utilize or will utilize the facilities at NRDS in connection with their participation in the program. At the present time, research and development are concentrated upon nuclear reactors for use in nuclear rocket engines and further development of rocket engines and vehicle stages must await resolution of certain reactor problems now being investigated.

An essential supply base for NRDS is Camp Mercury, Nevada, 26 miles away, which is situated between NRDS and the only highway (U. S. 95) which services the area. At Camp Mercury, which primarily services the weapons test program of the AEC at the Nevada Test Site, are warehoused essential and ancillary supply materials, including petroleum fuels, for use at NRDS. NRDS depends on deliveries from Camp Mercury and from other points. Receipt of supplies depends on access from U. S. Highway 95. If, through picketing or other means, supplies are prevented from being delivered to NRDS as needed, operations at NRDS must inevitably cease or be seriously curtailed.

5. *Pan American's Functions at NRDS.*

(a) In order to make continuously available the capabilities of NRDS to participants of the ROVER program,

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it is necessary that operations and maintenance activities be supported by a support services contractor. Accordingly, in response to solicitations by SNPO in 1962, 28 companies submitted proposals for a contract to perform support services at NRDS. After extensive consideration, Pan American was awarded the contract based on its demonstrated competence to render the services required, including the fact that it had acquired substantial technical experience in the handling and uses of liquid hydrogen and high pressure gases and the techniques of radiation control while rendering support services for the United States Air Force at Cape Canaveral (now Cape Kennedy). On June 28, 1963, the AEC entered into a prime definitive contract with Pan American (administered by SNPO-N) to render support services at NRDS.

(b) In general, Pan American is engaged extensively in the highly technical liquid hydrogen, high-pressure gases, radiation and electronics aspects of the NRDS operation. In this connection, Pan American employees participate in or will participate in the following: maintenance and operation of vacuum-jacketed piping and storage vessels containing liquid hydrogen at approximately minus 428° F; handling and transportation of radioactive fuel elements; measuring, monitoring, and controlling radiation; installation and maintenance of electronic systems for instrumentation; collection of data gathered by those systems; and calibration of instrumentation. Additionally, Pan American is responsible for procurement of station supplies and equipment in support of NRDS operations and is also contractually responsible, among other things, for: operation of station utilities, except telephone service; general routine and preventive maintenance of all NRDS facilities, and

operational modifications; and operation of computers, laboratories and shops. Pan American does no construction work within the coverage of the Davis-Bacon Act. In addition, Pan American provides custodial janitorial services, and clerical and chauffeuring personnel to other participants of the ROVER program at NRDS. Pan American currently employs at NRDS about 460 employees, the majority of whom perform technical functions. Approximately 210 of Pan American's employees at NRDS, who are mechanical and related employees, are represented by the Transport Workers Union of America ("TWU") and are covered by a collective bargaining contract entered into between TWU and Pan American effective October 5, 1962. The remaining employees perform administrative, engineering, clerical, and supply functions.

6. *Other Significant Service Contractors at NRDS.*

(a) Catalytic Construction Company ("Catalytic") is the construction management contractor for NRDS. It accomplishes construction of facilities at NRDS (within the coverage of the Davis-Bacon Act) either through fixed-cost sub-contractors or by use of its own employees; it also inspects constructed facilities and performs engineering studies. Catalytic's sub-contractors currently employ about 250 construction workers at NRDS in addition to some 50 Catalytic construction employees there. These construction workers are members of and are provided by the building and construction trades unions and the teamsters union who are appellees herein.

(b) Reynolds Electrical and Engineering Company, Inc. ("Reynolds") employs roughly 50 people who prepare and serve food, render health and medical services, and perform

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fire protection and road maintenance functions, at NRDS. In addition, Reynolds employs at Camp Mercury an additional 800 people, some of whom perform the following services there which are necessary for NRDS operations: warehousing and issuance of stores and supplies; automotive maintenance; radiation film badge processing; operation of central telephone communications; maintenance of power transmission lines outside of NRDS; and operation of a printing office. The road and power line maintenance employees and the fire protection and medical services workers are covered by collective bargaining contracts between Reynolds and several of the appellee unions. The employees who prepare and serve food at NRDS are represented by the appellee Culinary Workers' Union and are covered by a collective agreement between that union and Reynolds.

7. The Picketing of July 30 and its Effects.

(a) Beginning early in the morning on July 30, 1963, picketing sanctioned by the appellee unions occurred at the entrance to the road leading from the main highway to Camp Mercury and NRDS. The picket signs were directed at "Area 400" (NRDS) and purported to protest "AEC and Pan Am Paying Substandard Wages." The picketing, which was recognized by the District Court to be part of what "appears essentially to be a jurisdictional dispute", continued until enjoined by a temporary restraining order issued, during the morning of July 31, 1963, by the United States District Court for the District of Nevada.

(b) The effects of that short-lived picketing were profound. A test which was scheduled to be conducted on August 2, 1963, at NRDS was necessarily postponed for

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two weeks because the company supplying the liquid hydrogen from Southern California would not dispatch its trucks because it anticipated that its union drivers would not cross the picket line. The short-duration picketing had other severe consequences. In my capacity as Chief of SNPO-N, I have been informed and advised that, in addition to a number of Pan American's NRDS employees who refused to work because of the picketing:

(1) On July 30 and at least during the morning of July 31st, all of the some 57 construction trades employees (represented by building and construction trades unions which are appellees herein) then employed by Catalytic at NRDS refused to work because of the picket line. Similarly, for that same period, 130 of about 135 construction trades employees (similarly represented) of Catalytic's sub-contractors then employed at NRDS refused to work. Consequently, construction of essential facilities at NRDS ceased.

(2) For the same period, all of the approximately 22 employees then employed by Reynolds at NRDS to prepare and service food and render ancillary services at the cafeteria there (they are represented by appellee Culinary Workers Union) refused to work.

(3) For the same period, some 25 of 28 operating engineers then employed at NRDS by Air Products and Chemical, Inc. (the contractor primarily responsible for operation of the liquid hydrogen systems prior to final assumption of that responsibility by Pan American in accordance with its contract with the AEC) refused to work. Those employees were represented by the Operating Engineers Union, an appellee herein. Hence,

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progress on the liquid hydrogen systems and preparation of those systems for contemplated tests were halted.

(4) Warehousemen at Camp Mercury, employed by Reynolds and represented by appellee Teamsters Union, refused to load needed supplies for NRDS on a truck driven from NRDS for that purpose during the morning of July 30th by Pan American employees (represented by the TWU) and the truck at that time returned to NRDS without the supplies.

8. *The Imminence of Further Picketing.* I am further informed and advised that, on November 26, 1963, in the evening, appellee Building & Construction Trades Council conducted an "Important Meeting!" at Las Vegas, Nevada, to which it had invited by printed circulars "All Employees of Pan American at NRDS Excluding Office Employees." (A true copy of that circular is annexed hereto and made a part hereof as Exhibit A.) About 75 of Pan American's 330 non-office NRDS personnel attended. The meeting was addressed by the President of the Building & Construction Trades Council, by representatives of some of its constituent unions, and by a representative of the Teamsters Union. At the meeting, I am further informed, Pan American's employees who attended were asked to fill out and sign cards authorizing "the Building and Construction Trades Council, to represent me in collective bargaining with my employer." I am further advised that, at the meeting, those in attendance were told by union representatives that, commencing on "December 4, 1963" after the outstanding injunction would expire, the unions will assert jurisdiction over Pan American's employees at NRDS and that the "full force" of all the unions would be used to obtain recognition

along craft lines of the individual unions as the collective bargaining representatives of Pan American's employees at NRDS. I am informed and understand that the injunction now in effect will expire if the Court issues its mandate herein to the District Court. In view of the experience of the picketing of July 30 and 31, and in light of the avowed intention of the appellee unions to seek recognition as described above, it seems apparent that picketing will be resumed if the restraint upon such activity is allowed to dissolve.

9. *The Effects of Further Picketing.* Resumption of picketing will, in my opinion, have extremely severe consequences. The following effects are anticipated.

(a) Many important, interrelated and interdependent system, component and facility checking tests have been scheduled to take place within the near future. These tests cannot commence or proceed without support services. With specific reference to the reactor and engine development programs, every day lost results in at least a one day slip in schedule. And, in some circumstances, a day lost can result in a loss of a week or more in scheduling.

(b) Certain significant operational modifications to the test cells are in progress. The scheduled tests depend upon completion of these operational modifications. In the event of picketing, interruption of this critical work is likely to occur.

(c) Presently under construction at NRDS are facilities required for development testing of nuclear rocket engines and various support facilities for NRDS. The construction of the engine facilities is closely scheduled on an

over-all program basis so that when the engines to be tested are ready for testing, the test facilities will be immediately available. In the event that construction workers honor picket lines, as they have in the past, construction will immediately cease, as it has in the past. It is predicted that the schedule will slip at least one day for every day that the jobs are not manned. In addition, new construction is in progress at the test cells referred to above (at which operational modifications are in progress) and is required to sustain reactor development as presently scheduled. Schedule losses ranging from one day to over a week can be anticipated to follow upon every day of such construction lost because of picketing activity.

(d) Non-receipt of essential supplies (including liquid hydrogen, high pressure helium and nitrogen, construction materials, fuel and food) will have an immediate and profound impact on NRDS operations. It is anticipated that delivery of essential supplies will be severely inhibited by the imminent picketing activity.

(e) Other and increased costs would inevitably be incurred simply because of the cost attendant upon standby time in the prospect of resuming operations. Resources generally would be wasted. Perhaps the most important of these resources is the time lost by the scientific and engineering personnel who have gathered at NRDS on behalf of the various ROVER participating contractors.

10. *Irreparable Harm.* It is my opinion as Chief of SNPO-N that resumption of picketing of NRDS will result in substantial irreparable injury to the ROVER program. The coordinated sequence of steps in the ROVER project will be interrupted; the resultant delay in the schedule can-

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Affidavit of Bob P. Helgeson, Sworn to December 1, 1963

not be recovered, with consequent adverse effects on the advanced activities of the United States space program.

/s/ BOB P. HELGESON
Bob P. Helgeson

Sworn to before me this
1st day of December, 1963.

/s/ RAYMOND COHEN
Notary Public
State of Nevada
County of Clark

My commission expires: February 20, 1967

Appendix C

Exhibit A to Affidavit of Bob P. Helgeson

ATTENTION! ATTENTION!

All Employees of Pan American

AT N.R.D.S.

Excluding Office Employees

Important Meeting!

Plumbers & Pipe Fitters Union Hall

PLACE: 714 South First Street — Las Vegas, Nevada
TIME: 8:00 P.M. TUESDAY, NOVEMBER 26th, 1963
PURPOSE: Economic Improvements for Employees at N.R.D.S.

This meeting is being sponsored by the Building Construction Trades Council of Clark, Lincoln, Nye and Esmeralda Counties of Nevada

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